

Senate File 311 - Enrolled

SENATE FILE 311

AN ACT

RELATING TO THE REGULATION OF THE BUSINESS OF DEBT MANAGEMENT
AND MAKING PENALTIES APPLICABLE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 533A.1, Code 2009, is amended to read
as follows:

533A.1 DEFINITIONS.

As used in this chapter:

- ~~1. "Allowable cost" means an actual, identifiable third-party expense incurred by the licensee on behalf of a specific debtor, such as postage and long distance telephone charges, that may be itemized and charged against the debtor for payment.~~
- ~~2. 1. "Creditor" means a person who grants credit, a person who takes assignment of the rights to payments of a person who grants credit, or a person for whose benefit moneys are being collected and distributed by licensees a licensee.~~
- ~~3. 2. "Debt management" means the planning and management of the financial affairs of a debtor and the receiving therefrom of money or evidences thereof for the purpose of distributing the same to the debtor's creditors in payment or partial payment of the debtor's obligations for a fee, when done for a fee, any of the following:~~
 - a. Arranging or negotiating, or attempting to arrange or negotiate, the amount or terms of debt owed by a debtor to a creditor.
 - b. Receiving from a debtor, directly or indirectly, money or evidences thereof for the purposes of distributing the same to one or more creditors of the debtor in payment or partial payment of the debtor's obligations.
 - c. Serving as an intermediary between a debtor and one or more creditors of the debtor for the purpose of obtaining concessions from the creditors.
 - d. Engaging in debt settlement.
- ~~3. "Debt settlement" means seeking to settle the amount of a debtor's debts with creditors for less than the amounts owed on the debts.~~
4. "Debtor" means any natural person.
5. "Donation" means money given by the debtor to a licensee as a gift for debt management and outside of the debt management contract.
6. "Fee" means the moneys paid by the debtor to the licensee as payment for debt management and shall not include money paid to the licensee or held by the licensee for distribution to a creditor, ~~allowable costs~~, a distribution to the debtor as a refund, or a donation.
7. "Gratuitous debt-management service" means debt management without charging a fee.
8. "Licensee" means any person licensed under this chapter.
9. "Natural person" means an individual who is not an association, joint venture, or joint stock company, partnership, limited partnership, business corporation, nonprofit corporation, other business entity, or any group of individuals or business entities, however organized.
10. "Office" means each location by street number, building number, city, and state where any person engages in debt management.
11. "Person" means an individual, an association, joint venture or joint stock company, partnership, limited partnership, business corporation, nonprofit corporation, or any other group of individuals however organized.
12. "Superintendent" means the superintendent of banking.

Sec. 2. Section 533A.2, subsection 2, Code 2009, is amended by adding the following paragraph:

NEW PARAGRAPH. h. A person licensed under chapter 533C, including that person's authorized delegates as defined in section 533C.102, or a person exempt from licensing under section 533C.103, when engaging in money transmission or currency exchange as defined in chapter 533C.102.

Sec. 3. Section 533A.2, subsection 3, Code 2009, is amended to read as follows:

3. The application for a license shall be in the form prescribed by the superintendent. If the applicant is not a natural person, a copy of the legal documents creating the application shall be filed with the application. The application shall contain all of the following:

- a. The name of the applicant.
- b. If the applicant is not a natural person, the type of business entity of the applicant and the date the entity was organized.
- c. If the applicant is a foreign corporation, both of the following:
 - (1) An irrevocable consent, duly acknowledged, that suits and actions may be commenced against the licensee in the courts of this state by service of process performed as provided in section 617.3 or as provided in the Iowa rules of civil procedure.
 - (2) Proof of authorization to do business in this state.
- ~~c.~~ d. The address where the business is to be conducted, including information as to any branch office of the applicant.
- ~~d.~~ e. The name and resident address of the applicant's owner or partners, or, if a corporation, association, or agency, of the members, shareholders, directors, trustees, principal officers, managers, and agents.
- f. The name, physical address, and telephone number of the licensee's agent for service of process.
- ~~e.~~ g. Other pertinent information as the superintendent may require, including a credit report.

Sec. 4. Section 533A.2, subsection 5, Code 2009, is amended to read as follows:

5. Each applicant shall furnish with the application a description of its proposed debt management program, a copy of the disclosures it will be providing debtors pursuant to section 533A.8, subsection 3, and a copy of the contract the applicant proposes to use between the applicant and the debtor, which shall contain a schedule of fees to be charged the debtor for the applicant's services pursuant to section 533A.8, subsection 4.

Sec. 5. Section 533A.8, Code 2009, is amended by striking the section and inserting in lieu thereof the following:

533A.8 LICENSEE REQUIREMENTS.

1. A licensee shall describe the methodology of its debt management program to each potential debtor client so that the debtor can make an informed decision as to whether or not the licensee's program is an appropriate option for the debtor.
2. A licensee shall conduct a comprehensive review of a debtor's debts and monthly budget and make a determination that the licensee's program is an appropriate option for the debtor before entering into a contract with the debtor. A licensee shall not accept an account unless a written and thorough budget analysis has been performed which indicates that the debtor can meet the requirements determined by the budget analysis.
3. a. A licensee, including any third party who markets or sells a debt management program on behalf of a licensee, shall make the following disclosures to a debtor both verbally and in writing before the debtor signs a contract to enroll in the debt management program:
 - (1) The total estimated fee the debtor will pay for participating in the program if the debtor remains in the program for the entire term of the contract.
 - (2) That the licensee cannot guarantee any specific results from participation in the program.
 - (3) That the debtor may elect to discontinue participation in the program without penalty at any time during the program.
 - (4) If the program includes obtaining concessions regarding the principal amount of the debt from creditors, that any concessions may be considered income to the debtor subject to income tax.
 - (5) If the program is based on a model which does not require the licensee or another licensee to receive money or evidence thereof from the debtor to distribute to the debtor's creditors, the following:
 - (a) That payments are not made to creditors on the debtor's behalf, so the debtor is still obligated to make payments to creditors.
 - (b) That creditors may continue to try to collect the debtor's debts while the debtor is enrolled in the program.
 - (6) If the program is a debt settlement program, that the

following may occur:

(a) The debtor's credit report and credit score may be harmed by participating in the program.

(b) Failure to make required minimum payments to the debtor's creditors may violate the debtor's agreement with the creditors and may result in additional charges, such as late fees, over limit fees, and penalties and creditors may raise the debtor's interest rate.

(c) The debtor may be sued by creditors if the debtor fails to make required minimum payments to the debtor's creditors.

b. The verbal disclosures required pursuant to this subsection shall be made at a normal rate of speech in a manner designed to ensure the debtor understands the disclosures. The written disclosures shall be provided in a separate document from the contract between the licensee and the debtor and shall be designed to ensure the debtor understands the disclosures. It is a violation of this chapter for a licensee, or any third party who markets or sells a debt management program on behalf of a licensee, to contradict these disclosures in any representation, advertising, or solicitation.

4. A licensee shall make a written contract with a debtor and shall immediately and before collecting any fee, furnish the debtor with a true copy of the contract. A contract shall not extend for a period longer than sixty months. The contract between a licensee and a debtor shall include all of the following:

a. The total estimated charges agreed upon for the services of the licensee and any third parties providing services for or in conjunction with the licensee.

b. A statement of how and when the charges are to be paid.

c. A statement that the debtor may elect to discontinue participation in the program without penalty at any time during the program.

d. The beginning and expiration date of the contract.

e. The name, physical address, mailing address if different from the physical address, and telephone number of the licensee.

f. A description of the services to be provided by the licensee, which shall include educational and counseling services designed to assist the debtor in managing the debtor's borrowing, spending, and saving habits.

g. If the debt management program is a debt settlement program, the following:

(1) A comprehensive list of every debt at the time of enrollment that is to be negotiated for settlement by the licensee, including the creditors' names and identifying information.

(2) The estimated amount of money needed to fund settlements.

h. If the debt management program is based on a model which requires the licensee or any licensee to receive money or evidences thereof from the debtor to distribute to the debtor's creditors, the contract shall set forth the complete list of creditors who are to receive payments under the contract.

5. If the debt management program is based on a model which requires the licensee or any licensee to receive money or evidences thereof from the debtor to distribute to the debtor's creditors, the licensee who receives the money or evidences thereof from the debtor for distribution to the debtor's creditors shall do all of following:

a. Maintain a separate bank trust account in which all payments received from debtors for the benefit of creditors shall be deposited and in which all payments shall remain until a remittance is made to either the debtor or the creditor.

b. Make remittances to creditors within forty-five days after initial receipt of funds, and thereafter remittances shall be made to creditors within thirty days of receipt, less fees, unless the reasonable payment of one or more of the debtor's obligations requires that such funds be held for a longer period so as to accumulate a sum certain.

c. Provide each debtor a monthly written statement of disbursements made and fees deducted from the debtor's account. The licensee shall also provide a verbal accounting of disbursements made and fees deducted from the debtor's account at any time the debtor requests it during normal business hours.

d. Not receive any fee, or have or cause any fee to be

received by any other licensee, other than the initiation fee permitted in section 533A.9, subsection 2, unless the licensee has the consent of at least fifty percent of the total number of the creditors listed in the licensee's contract with the debtor, or such a like number of creditors have accepted a distribution of payment. The debtor shall be informed by the licensee of those creditors who have not agreed to the licensee's handling of the account.

6. If the debt management program is not based on a model which requires the licensee or any licensee to receive money or evidences thereof from the debtor to distribute to the debtor's creditors, both of the following shall apply:

a. The debtor shall maintain full control of and access to any moneys set aside for payment to creditors.

b. The licensee may not receive consideration from any third party in connection with services rendered to a debtor.

7. A licensee shall keep, and use in the licensee's business, books, accounts, and records which will enable the superintendent to determine whether such licensee is complying with the provisions of this chapter, any applicable state or federal laws or regulations, and the rules and regulations of the superintendent. A licensee shall preserve such books, accounts, and records for at least five years after making the final entry on any transaction recorded therein. Records shall contain complete information regarding all contracts, extensions thereof, payments, disbursements, and charges, which records shall be open to inspection by the superintendent and the superintendent's duly appointed agents during normal business hours.

8. In the event a compromise of a debt is arranged by a licensee with one or more creditors, the debtor shall have the full benefit of such compromise.

9. All licensee advertising content, and data supporting any claims made in the advertising, shall be maintained in retrievable format and available to the superintendent for inspection for a minimum of five years.

10. If the licensee maintains an internet website, the licensee shall make available on its internet website a physical address for its headquarters, a main telephone number, and an electronic mail contact address.

11. The superintendent may adopt additional requirements applicable to licensees pursuant to administrative rule.

Sec. 6. Section 533A.9, Code 2009, is amended to read as follows:

533A.9 FEE AGREED IN ADVANCE.

~~1. The fee of ~~the~~ a licensee charged to ~~the~~ a debtor shall be agreed upon in advance and stated in the contract and provision for settlement in case of cancellation or prepayment shall also be clearly stated in the contract. The fee of the licensee charged to the debtor shall not exceed fifteen percent of any payment made by the debtor and distributed to the creditors pursuant to the contract. In case of total payment of the contract before the contract period has expired, the licensee shall be entitled only to a fee of no more than three percent of the final payment.~~

~~2. A debtor may be charged a one-time initiation fee for debt management services, which shall not exceed fifty dollars.~~

~~3. If a debt management program is based on a model that required the licensee or any other licensee to receive money or evidences thereof from the debtor to distribute to the debtor's creditors, the debtor may not be charged a fee exceeding the initiation fee permitted in subsection 2 plus a fee not to exceed fifteen percent of amounts actually applied to the debtor's accounts with the creditors. Other than the initiation fee, the debtor shall at no time be required to pay fees exceeding fifteen percent of amounts actually applied to the debtor's accounts with the creditors.~~

~~4. If a debt management program is not based on a model that requires the licensee or another licensee to receive money or evidences thereof from the debtor to distribute to the debtor's creditors, a debtor may not be charged a fee exceeding the sum of the following:~~

~~a. The initiation fee permitted in subsection 2.~~

~~b. An additional fee not to exceed eighteen percent of the total amount of the debtor's debts enrolled in the licensee's program at the time the debtor enrolled in the program. The additional fee shall not be collected pursuant to a method other than the percent of total debt method or the percent of savings method, as provided in subparagraphs (1) and (2), respectively.~~

(1) The percent of total debt method involves the additional fee being collected in equal monthly installments payable over the first two-thirds of the term of the contract between the debtor and the licensee. The debtor may elect to discontinue participation at any time during the program by providing written notice to the licensee at the address specified in the contract. Notice of discontinuance, if given by mail, is effective when deposited in the mail properly addressed with postage paid. If the debtor discontinues participation in the program, no future installments are due after the mailing of the notice. If participation is discontinued within the first twelve months of the contract, the licensee may retain only fifty percent of the installments it is scheduled to receive through the date the debtor gives the discontinuation notice and shall refund the excess to the debtor. Notwithstanding the foregoing, the licensee may collect a pro rata portion of the total fee upon completion of a settlement of a debtor's debt. The pro rata portion shall be calculated by multiplying the total dollar amount of the contracted additional fee by the percentage of debt settled of the original amount of debt enrolled in the program. In no event shall the additional fee exceed eighteen percent of the total amount of the debtor's debts enrolled in the licensee's program at the time the debtor enrolled in the program.

(2) The percent of savings method involves the additional fee being collected in monthly installments of fifty dollars per month, and the monthly fees collected shall be credited against any fees the licensee earns as the result of settlements. The debtor may elect to discontinue participation at any time during the program by providing written notice to the licensee at the address specified in the contract. Notice of discontinuance, if given by mail, is effective when deposited in the mail properly addressed with postage paid. If the debtor discontinues participation in the program, no future installments are due after the mailing of the notice. If participation is discontinued within the first twelve months of the contract, the licensee may retain only fifty percent of the installments it is scheduled to receive through the date the debtor gives the discontinuation notice and shall refund the excess to the debtor. Notwithstanding the foregoing, the licensee may collect a pro rata portion of the total fee upon completion of a settlement of a debtor's debt. The pro rata portion, which may be collected at the time of settlement, shall be calculated by multiplying the contracted savings percentage, not to exceed thirty percent, by the amount saved on settled debt. The amount saved on settled debt is the difference between the balance of that debt upon enrollment in the program and the amount settled. In no event shall the additional fee exceed eighteen percent of the total amount of the debtor's debts enrolled in the licensee's program at the time the debtor enrolled in the program.

5. Any services provided by a third party, other than the debtor's own banking fees, including lead generating, marketing, and selling services, shall be paid for by the licensee. Under no circumstances shall a debtor be required to pay a fee to a third party to obtain a licensee's services.

Sec. 7. Section 533A.11, Code 2009, is amended to read as follows:

533A.11 UNLAWFUL ACTS OF LICENSEE.

~~It shall be is~~ unlawful and a violation of this chapter for the holder of any license issued under ~~the terms and provisions hereto~~ this chapter:

1. To purchase from a creditor any obligation of a debtor.
2. To operate as a collection agent and as a licensee as to the same debtor's account without first disclosing in writing such fact to both the debtor and creditor.
3. To execute any contract or agreement to be signed by the debtor unless the contract or agreement is fully and completely filled in and finished.
4. To receive or charge any fee in the form of a promissory note or other promise to pay, or receive or accept any mortgage or other security for any fee, both as to real or personal property.
5. To pay any bonus or other consideration to any individual, agency, partnership, unincorporated association, or corporation for the referral of a debtor to the licensee's business, or to accept or receive any bonus, commission, or other consideration for referring any debtor to any individual, partnership, unincorporated association, agency, or corporation for any reason.

6. To advertise the licensee's services, display, distribute, broadcast, or televise, or permit to be displayed, advertised, distributed, broadcast, or televised the licensee's services in any manner inconsistent with the law.

7. To make, or facilitate the debtor in making, any false or misleading claim regarding a creditor's right to collect a debt.

8. To dispute, or facilitate the debtor in disputing, the validity of a debt absent a good faith belief by the debtor that the debt is not validly owing.

9. To challenge a debt without the written consent of the debtor.

10. To provide or offer to provide legal advice or legal services, including but not limited to the negotiation of payments or the settlement of a debtor's delinquent account that is subject to pending litigation, unless the person providing or offering to provide legal advice is licensed to practice law in the state in which the debtor resides.

11. To execute a power of attorney or any other written agreement that extinguishes or limits the debtor's right to contact or communicate with any creditor.

12. To take a wage assignment, a lien of any type on real or personal property, or other security to secure the payment of compensation. Any such security is void and unenforceable.

13. To induce or attempt to induce a debtor to enter into a contract which does not comply in all respects with the requirements of this chapter.

14. Where applicable, to make any statements, or allow a third party marketing or selling the licensee's program to make any statements, in the course of advertising or solicitation that contradicts the disclosures required by section 533A.8.

15. When the licensee's program is a debt settlement program, the following:

a. To advise a debtor to stop making payments to creditors.

b. To lead a debtor to believe that a payment to a creditor is in settlement of a debt to the creditor unless the creditor provides a written certification or confirmation that the payment is in full settlement of the debt, or is part of a payment plan that is in full settlement of the debt.

c. To make any of the following representations:

(1) The licensee will furnish money to pay bills or prevent attachments.

(2) Payment of a certain amount will guarantee satisfaction of a certain amount or range of indebtedness.

(3) Participation in a program will prevent debt collection calls, litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment.

(4) Participation in a program will not harm the debtor's credit report or credit score.

(5) Participation in a program will prevent the debtor from having to declare bankruptcy.

(6) That the licensee is authorized or competent to furnish legal advice or perform legal services, including but not limited to the negotiation of payments or the settlement of a debtor's delinquent account that is subject to pending litigation.

(7) That the licensee's negotiations with creditors will result in the elimination of adverse information on the debtor's credit report.

Sec. 8. NEW SECTION. 533A.17 WAIVER NOT ALLOWED.

A waiver by a debtor of the provisions of this chapter is void and unenforceable as contrary to public policy. An attempt by a licensee to induce a debtor to waive the debtor's rights is a violation of this chapter.

Sec. 9. Section 533A.6, Code 2009, is repealed.

JOHN P. KIBBIE
President of the Senate

PATRICK J. MURPHY
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 311, Eighty-third General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved _____, 2009

CHESTER J. CULVER
Governor